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FISCAL IMPACT STATEMENT

LS 6110
BILL NUMBER: HB 1261

NOTE PREPARED: Dec 13, 2008
BILL AMENDED:

SUBJECT: Sex Offender Procedures.

FIRST AUTHOR: Rep. Foley
FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: This bill specifies the court in which a petition to remove the designation as a sexually violent predator or an offender against children must be filed, and provides that the petitioner has the burden of proving that the designation should be removed.

(The introduced version of this bill was prepared by the Sentencing Policy Study Committee.)

Effective Date: July 1, 2009.

Explanation of State Expenditures:

Explanation of State Revenues:

Explanation of Local Expenditures: *Court Specification for Reclassifying a Person From A Sexually Violent Predator to a Sex Offender* – Some court petitions could shift from a court in one county to a court in another county depending on where a person was sentenced and where the person lives. The person filing this petition would pay a civil filing fee. This would remove any confusion about the court in which a person would file a case for reclassification.

Burden of Proof for Reclassifying – Current law is silent about the degree of evidence that is needed to determine whether a person should be reclassified from a sexually violent predator to a sex offender. Consequently, courts could base this decision on a preponderance of evidence. Two higher levels of evidence are used in some instances: “clear and convincing” and “beyond a reasonable doubt”. Increasing the burden of proof from a preponderance of evidence to clear and convincing evidence could increase the amount of

evidence that the court would need to determine whether the petitioner is no longer a sexually violent offender. It could also reduce the number of sexually violent predators who might be reclassified as sex offenders.

Background Information – Any person who commits a sex crime is considered a sex offender, except if a person is convicted of sexual misconduct with a minor and the age difference between the person and the victim is not more than four years and the victim and the person have an ongoing relationship. Generally, the person will be between 18 and 19 since the victim will be between 13 and 15.

A sexually violent predator is by law defined as a sex offender who “suffers from a mental abnormality or personality disorder that makes the individual likely to repeatedly commit a sex offense” (IC 35-38-1-7.5). Persons are automatically classified as sexually violent predators if they are convicted of rape, criminal deviate conduct, child molesting as a Class A or B felony, or vicarious sexual gratification as a Class A, B, or C felony. They can also be classified as a sexually violent predator by a court hearing.

“Offenders against children” are by default any sexually violent predators or any sex offenders convicted of a crime of child molesting, exploitation, solicitation, or seduction.

Explanation of Local Revenues:

State Agencies Affected:

Local Agencies Affected: Trial courts with criminal jurisdiction and probation departments

Information Sources:

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